Tenaga Nasional Bhd v Kamarstone Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — APPEAL NO A-02(IM)-3448 OF 2010
MOHD HISHAMUDIN, BALIA YUSOF AND AZIAH ALI JJCA
8 MAY 2013

Public Utilities — Electricity — Charges for electricity — Back-billing — Error in calculation of electricity usage resulting in undercharging — Whether Tenaga Nasional Bhd may only back bill undercharged amount for three months — Licensee Supply Regulation 1990 reg 11(2)

By letters dated 13 January 2003 and 29 July2003, the appellant informed the respondent that there had been a mistake on the part of the appellant in calculating the respondent's electricity usage and as a result, the respondent had been undercharged for a period of 75 months. The appellant filed this suit on 26 October 2005 demanding payment of the amount undercharged, amounting to RM581,876.77. The learned judicial commissioner ('JC') in dismissing the claim held that by virtue of reg 11(2) of the Licensee Supply Regulations 1990 ('reg 11(2)'), the appellant could only claim for the undercharged amount for a period of only three months, namely, May, June and July 2003. The issue arising in this appeal was whether reg 11(2) was applicable here. The appellant claimed that reg 11(2) was not applicable since the appellant's claim arose before the amendment to reg 11(2) which came into force on 15 December 2001.

Held, dismissing the appeal with costs:
The JC was correct in his interpretation of reg 11(2). The JC has also taken into consideration the appellant's own admission that their cause of action arose from 13 January 2003. The facts showed that the respondent was only informed of the undercharging on 13 January 2003 (see para 7).

[Bahasa Malaysia summary

Melalui surat-surat bertarikh 13 Januari 2003 dan 29 Julai 2003, perayu memberitahu responden bahawa terdapat kesalahan oleh pihak perayu dalam mengira penggunaan elektrik responden dan akibatnya, responden telah dikenakan bayaran kurang untuk tempoh selama 75 bulan. Perayu memfailkan tindakan ini pada 26 Oktober 2005 memohon bayaran jumlah yang dikenakan bayaran kurang, berjumlah sebanyak RM581,876.77. Pesuruhjaya kehakiman ('PK') dalam menolak tuntutan tersebut memutuskan bahawa mengikut peraturan 11(2) Peraturan-Peraturan Bekalan Pemegang Lesen 1990 ('peraturan 11(2)'), perayu hanya dapat menuntut untuk jumlah dikenakan

bayaran kurang bagi tempoh hanya tiga bulan, iaitu, Mei, Jun dan Julai 2003. isu berbangkit daripada rayuan ini adalah sama ada peraturan 11(2) boleh diguna pakai di sini. Perayu menuntut bahawa peraturan 11(2) tidak boleh diguna pakai memandangkan tuntutan perayu berbangkit sebelum pindaan kepada peraturan 11(2) yang berkuat kuasa pada 15 Disember 2001.

Diputuskan, menolak rayuan dengan kos:
PK adalah betul dalam tafsirannya terhadap peraturan reg 11(2). PK juga mengambil kira pengakuan perayu sendiri bahawa kausa tindakan mereka berbangkit daripada 13 Januari 2003. Fakta menunjukkan bahawa responden hanya diberitahu mengenai bayaran kurang pada 13 Januari 2003 (lihat perenggan 7).]

Notes

For cases on charges for electricity, see 10 *Mallal's Digest* (4th Ed, 2013 Reissue) paras 2237–2240.

Cases referred to

Tenaga Nasional Bhd v Ban Heng Rice Mill (1952) Sdn Bhd [2010] MLJU 138; [2010] 10 CLJ 590, HC (refd)
Tenaga Nasional Bhd v Calsonic Compressor (M) Sdn Bhd [2009] 8 MLJ 793, HC (refd)
Tenaga Nasional Bhd v Teck See Plastic Sdn Bhd [2007] 5 MLJ 430; [2007] 9 CLJ 161, HC (refd)

Legislation referred to

Licensee Supply Regulations 1990 reg 11(2)
Limitation Act 1953 s 29

Appeal from: MT4–22–228 of 2005 (High Court, Ipoh)

Abu Bakar Jais (Helmi Hamzah and Nurzali Mohd with him) (Hisham Sobri & Kadir) for the appellant.
Loong Chet Siean (Loong & Associated) for the respondent.

Balia Yusof JCA:

BACKGROUND

[1] The respondent applied for an additional load of electricity supply to its premises from 610kw to 1210kw. Upon approval, a supply contract was signed on 15 August 1996 from which date the electricity supply to the respondent's premises was increased to the agreed 1210kw.

[2] By two letters dated 13 January 2003 and 29 July 2003 the appellant

informed the respondent that there was a mistake on the part of the appellant in using the multiplication factor. Instead of the (X100) multiplication factor for the new supply, a multiplication factor of (X50) was used. As a result, the respondent had been undercharged for a period of 75 months and the amount undercharged was RM581,876.77. The appellant demanded for the payment of the said amount. The respondent offered to pay the appellant RM28,328.40 in ten monthly instalments. The appellant refused and filed a suit claiming the sum of RM581,876.77 together with interest and costs. The suit was filed on 26 October 2005.

[3] The learned judicial commissioner ('JC') dismissed the appellant's claim.

[4] In dismissing the appellant's claim, the learned JC ruled that limitation under s 29 of the Limitation Act 1953 does not apply. The appellant's claim is not statute barred. The learned trial judge further held that by virtue of reg 11(2) of the Licensee Supply Regulations 1990 the appellant could only claim for the undercharged amount for a period of only three months, namely, for the months of May, June and July 2003. Since the respondent had paid for the electricity bills for the aforesaid three months, there was nothing owing to the appellant. Hence the dismissal of the appellant's claim.

THE APPEAL

[5] The only issue in the appeal before us is whether the learned JC was right in holding that reg 11(2) of the Licensee Supply Regulations 1990 is applicable to the case at hand. The appellant submitted that the regulation does not apply as the claim made by the appellant arose before the amendment to the said reg 11(2). The amendment took came into force on 15 December 2001 and has no retrospective effect. Reliance was placed on the case of *Tenaga Nasional Bhd v Teck See Plastic Sdn Bhd* [2007] 5 MLJ 430; [2007] 9 CLJ 161 and *Tenaga Nasional Bhd v Ban Heng Rice Mill (1952) Sdn Bhd* [2010] MLJU 138; [2010] 10 CLJ 590.

[6] The amended reg 11(2) of the Licensee Supply Regulations 1990 reads as follows:

> The reading of the consumer's meter shall be prima facie evidence of the amount of electricity consumed, provided that in the event a consumer has been undercharged or overcharged as a result of
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> (a) Meter inaccuracy;
>
> (b) Malfunctioning of the meter of its associated installation or part thereof;
>
> (c) Incorrect meter reading;
>
> (d) Incorrect application of a meter multiplying constant;

(e) Cross-connection of installation to different accounts; or

(f) Faulty installation,

the licensee shall make retrospective adjustments to the consumer's account in respect of consumption and demand for such period by taking into consideration the licensee's records, the consumer's consumption record and history available technical evidence and other relevant circumstances to rectify such undercharged or overcharged situation: Provided that the period for any retrospective adjustment shall not exceed three months from the date the consumer has been informed about being undercharged or overcharged.

[7] We agree with the learned JC on his interpretation of the said reg 11(2) as stated in His Lordship's grounds of judgment at p 19 of the appeal record Part A. We further note that the learned JC has also taken into consideration the appellant's own admission made during submissions by learned counsel of the appellant that their cause of action arose from 13 January 2003. The facts clearly show that the respondent was only informed of the undercharging on 13 January 2003 via exh P5.

[8] The learned JC found support on his interpretation of the said reg 11(2) quoting a passage from *Tenaga Nasional Bhd v Calsonic Compressor (M) Sdn Bhd* [2009] 8 MLJ 793 which says:

Applying sub-reg 11(2) of the Regulations to the instant case, the reading of the consumer's meter shall be prima facie evidence of the amount of electricity consumed. As the plaintiff had referred to its conduct in wrongfully programming the original meter installed at the defendant's premises as a mistake, ie an incorrect meter reading for the purposes of sub-reg 11(2), it could be concluded that under the Regulations, the plaintiff had a right to claim against the defendant for the amount undercharged for the supply for electricity. However, the amended sub-reg 11(2) only allows undercharging of not more than three months from the date the defendant had been informed about being undercharged. As the defendant in this case was only informed of the undercharging on 12 April 2005, the plaintiff was only entitled to claim for the undercharged sum from the period 12 January 2005–12 April 2005. However, since the meter had been replaced since 2 November 2004 and the correct sum of charges has been billed to the defendant and duly settled by the defendant since that date, the plaintiff's claim for RM2,110,792.53 against the defendant was misconceived in law and unsustainable.

[9] In our view, the learned JC has also rightly distinguished the two authorities relied on by the appellant as in both cases, the cause of action arose before the amendment of reg 11(2) which came into force on 15 December 2001.

[10] We found no merits in the appeal and the appeal is accordingly dismissed with costs of RM10,000. We further order that the deposit be paid towards costs.

Appeal dismissed with costs.

Reported by Kanesh Sundrum